IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.970 OF 2004

Maruti Chintu Dhanwade .. .. Appellant

Versus

The Collector, Dist. Kolhapur & Ors. Respondents

Mr.J.K.Jadhav for appellant

Mr.A.R.Patil, A.G.P. for respondent Nos.1, 2, 3,4 and 7

CORAM : P.V.KAKADE, J.

DATE : 27TH JUNE, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by 5th Addl. District Judge, Kolhapur dated 10th June, 2003 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Senior Division, Kolhapur dated 21st December 1998.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The suit was filed by the plaintiff for declaration and perpetual injunction as well as mandatory injunction against the defendants including the State Government on the ground that acquisition of the suit property was made without complying the legal requirements and therefore, was bad in law and hence it should be set aside.

. It was the case of the plaintiff that he was in possession of the suit property which was purchased in the year 1969. The mutation entries to that effect were made in the year 1984 and despite all these aspects the land came to be acquired by virtue of Notification dated 2.11.1978 applying the provision of Maharashtra Resettlement of Project Displaced Persons Act, 1976 and Gazette Notification under Section 4 of the Land Acquisition Act came to be issued in the year 1985. The award under Section 11 of the Land Acquisition Act also came to be passed in the year 1989 and possession of the suit property was taken by the State Government for the

said purposes. The suit came to be filed in the year 1990 for said reliefs. It is pertinent to note that no relief for possession of the suit property was claimed.

4. Both the courts below have come to the conclusion that the plaintiff failed to prove that he was in physical possession of the suit property on the date of the suit. It was also held that the plaintiff did not prove that the defendants had no right to take possession of the suit property and therefore, he was not entitled to any perpetual or mandatory injunction. It was further held that the defendants had proved that the suit land was legally and validly acquired by them and as such the plaintiff was non suited. The appeal was carried to the District Court, Kolhapur. The District Judge after hearing both the parties confirmed the findings recorded by the lower court and dismissed the appeal. Hence the present appeal.

5. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeals. The learned advocate for the appellant sought to submit that the findings of the courts below to the effect that whether the transfer of the suit land

in favour of the appellant was covered by Section 12 of the Maharashtra Resettlement of Project Displaced Persons Act, 1976. In this regard it must be noted, as can be seen from the record, that the plaintiff has claimed possession by virtue of Sale Deed of the year 1969, however, the document of sale deed itself is not brought on record nor secondary evidence is led in that respect, and therefore, the very foundation for the suit is missing. Moreover, the plaintiff's admission is recorded by both the courts below to the effect that on 11.1.1990 the Government had taken the possession of the suit land along with other lands of Babgonda Patil. It is further to be noted that evidence of defendants is sufficient to show that the acquisition of the land was done following due procedure, as laid down under the Land Acquisition Act, which can be seen from Notification dated 2.11.1978 vide Exh.67 by which the provisions of Maharashtra Resettlement of Project Displaced Persons Act, 1976 were made applicable. The notification under Sec. 4 of the Land Acquisition act of the year 1985 is at Exh.68, Notification of the said Act is at Exh.69, and thereafter, the award was passed under Sec.11 of the Land Acquisition Act on 29.4.1989, which is at Exh.81. These aspects are sufficient to

show that the plaintiff had no case to agitate and both the courts below appear to have properly appreciated the entire evidence on record and dismissed the suit.

6. In the light of these aspects I come to the conclusion that no case is made out by the appellant for admission of the appeal and as such it deserves to be dismissed. The appeal stands dismissed with no order as to costs.

. Consequently the Civil Application No.94 of 2004 also stands dismissed with no order as to costs.

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